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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/150,692    09/10/98    BACHAND    G    5137

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IM62/0825

EXAMINER

BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

08/25/99

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.  
09/150,692

Applicant(s)  
Bachand et al

Examiner  
Drew Becker

Group Art Unit  
1761



☒ Responsive to communication(s) filed on Oct 13, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above, claim(s) 11-13 is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-10 and 14-20 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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## **DETAILED ACTION**

### ***Election/Restriction***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-10 and 14-20, drawn to a method of fabricating a rolled food item and the food item produced, classified in class 426, subclass 420.
  - II. Claims 11-13, drawn to an apparatus for fabricating a rolled food item, classified in class 99, subclass 450.1.
2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus of group II can be used in a manner not limited to the method of group I, for instance the apparatus of group II can be used to apply corn syrup or any other adhesive and to any type of material not limited to just food products.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

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4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Alan Kamrath on August 3, 1999 a provisional election was made with traverse to prosecute the invention of group I, claims 1-10, and 14-20. Affirmation of this election must be made by applicant in replying to this Office action.

Claims 11-13 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 1-10 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zoss [Pat. No. 5,853,836] in view of Shapiro [Pat. No. 5,514,397].


Zoss teaches a rolled food product (Figure 1, 110) comprising a strip of food support material (Figure 1, 16), strips of food (Figure 1, 14), a label wrapped around the periphery of the rolled food item which acts to prevent unintentional unrolling of the roll (Figure 1, 68), applying adhesive to the end of the label (Figure 4, 134), the support material being wider than the rolled food (column 3, lines 57-62), the width of the area having adhesive being less than the width of the rolled food (Figure 1, 134 & 14), the support material being the same length as the rolled food (column 4, lines 3-12), the rolled food being dehydrated fruit material (column 1, line 20), and the support material being silicon parchment paper (column 3, line 53). Zoss does not recite applying water to the trailing edge of the rolled food. Shapiro teach a process for making a layered food product by spraying water between the layers to act as an adhesive (column 5, line 66 to column 6, line 3). It would have been obvious to one of ordinary skill in the art to incorporate the water spraying of Shapiro into the method of Zoss since Zoss teaches that it is known to apply edible adhesives to the rolled food to increase their natural tackiness (column 1, line 34).

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner can normally be reached on Monday-Thursday from 7:00 am to 4:00 pm and every other Friday from 7:00 am to 3:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Lacey, can be reached on (703)-308-3535. The fax number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

  
David Lacey  
Supervisory Patent Examiner  
Technology Center 1700

8/23/99

Drew Becker

August 23, 1999